Nos. 87-1130 and 87-1244

In the Supreme Court of the United States

OCTOBER TERM, 1987

MARY ELIZABETH BEATTIE AND CATHERINE ANNE BEATTIE, ETC., PETITIONERS

v.

UNITED STATES OF AMERICA

DAVID J. GREISEN, ETC., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether amounts paid to petitioners by the State of Alaska pursuant to its Permanent Fund dividend program constituted "income" that can constitutionally be taxed (No. 87-1244).

2. Whether these payments were excludable from taxable income as "gifts" under 26 U.S.C. 102 (both petitions).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-12)[1] is reported at 831 F.2d 916. The opinion of the district court (Pet. App. 13-39) is reported at 635 F. Supp. 481.

JURISDICTION

The judgments of the court of appeals were entered on November 5, 1987. The petition for a writ of certiorari in No. 87-1130 was filed on December 30, 1987, and the peti-

[1] "Pet. App." refers to the appendix to the petition in No. 87-1130.

tion for a writ of certiorari in No. 87-1244 was filed on January 24, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1976, the State of Alaska amended its Constitution to establish the "Permanent Fund," into which the State must deposit at least 25% of its mineral income each year. Alaska Const. Art. IX, § 15. The constitutional amendment prohibits the legislature from appropriating any of the principal of the Fund, but it permits the State to use the earnings for general governmental purposes. In 1980, the Alaska legislature enacted the Alaska Permanent Fund dividend program (the Act), 1980 Alaska Sess. Laws ch. 21 (*reprinted in* Pet. App. 40-49), to distribute annually to residents of the State a portion of the Fund's earnings. Under this statute, each resident over the age of 18 was to receive an annual dividend equal to one dividend unit for each year of Alaska residence since Statehood. 1980 Alaska Sess. Laws ch. 21, § 2; Pet. App. 42-43.

Section 1 of the Act described its "policy, purposes and findings" (Pet. App. 40). Section 1(a) stated (Pet. App. 40): "It is the duty and policy of the state with respect to the natural resources belonging to it and the income derived from those natural resources to provide for their use, development, and conservation for the maximum benefit of the people of the state." Section 1(b) then described the purposes of the Act as follows (Pet. App. 40-41):

> (1) to provide a mechanism for equitable distribution to the people of Alaska of at least a portion of the state's energy wealth derived from the development and production of the natural resources belonging to them as Alaskans;

(2) to encourage persons to maintain their residence in Alaska and to reduce population turnover in the state; and

(3) to encourage increased awareness and involvement by the residents of the state in the management and expenditure of the Alaska permanent fund (art. IX, sec. 15, state constitution).

Ronald and Patricia Zobel, who had been residents of Alaska for only a short time, filed an action challenging the validity of the distribution plan. They alleged that the statute, by granting benefits predicated upon length of residence, violated their right to equal protection of the laws and their right to free interstate migration. While the Zobels' case was pending, the Alaska legislature enacted "backstop" legislation to take effect if the durational requirements were invalidated. 1982 Alaska Sess. Laws ch. 102, § 19. This legislation retained the preamble and statement of purposes of the 1980 legislation, but it provided that all persons, including children, resident in the State for six months who intended to remain in the State were to receive a dividend payment from the earnings of the Permanent Fund. When this Court invalidated the original statute insofar as it granted different dividends to those who had resided in Alaska for differing periods of time (*Zobel* v. *Williams,* 457 U.S. 55 (1982)), the "backstop" legislation took effect. Pet. App. 16-18.

As a result, petitioners each received dividend checks, $1,000 for 1982 and $386 for 1983. The State attached to the checks statements notifying the recipients that the dividends constituted income for federal tax purposes.[2]

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[2] Pursuant to a request by the State, the IRS had issued a private ruling, which stated that the dividend payments were taxable income. Priv. Ltr. Rul. 81-21-122 (Feb. 27, 1981). The Internal Revenue Service subsequently published Revenue Ruling 85-39, 1985-1 C.B. 21,

The Beatties, petitioners in No. 87-1130, timely filed federal income tax returns for 1983 including as income the full amount of the dividends received for 1982 and 1983, and they paid the taxes due in the aggregate amount of $101.40. Greisen, petitioner in No. 87-1244, received the $1,000 dividend paid in 1982, filed a federal income tax return for that year reporting the dividend, and paid a tax of $2. Petitioners all filed administrative claims for refund of the taxes paid on the dividends, and those claims were disallowed. Petitioners then brought these two refund suits in the United States District Court for the District of Alaska, where they were consolidated. Pet. App. 19-23.

2. The district court denied petitioners' motions for summary judgment and granted the government's motion for summary judgment (Pet. App. 13-39). The court found that the intent of the Alaska legislature in enacting the statute was ascertainable from the statute itself and its legislative history, and therefore there was no factual question presented in the case that would make summary judgment inappropriate (*id.* at 25-28). Relying on *Commissioner* v. *Duberstein,* 363 U.S. 278 (1960), the court held that the dividends were not gifts excludable from income under Section 102 of the Internal Revenue Code[3] because they were payments by a State for a public purpose that was not the result of donative intent (Pet. App. 28-33). In so concluding, the court found that the preamble to the statement of purposes for the Permanent Fund dividend program made it "abundantly clear that the legislature considered itself under some form of obligation

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concluding that the Alaska dividend payments are includible in gross income.

[3] Unless otherwise noted, all statutory references are to the Internal Revenue Code (26 U.S.C.), as amended (the Code or I.R.C.).

to make the payments in question" (*id.* at 30). The court also rejected the contention that the dividend payments were not "income" that could constitutionally be subject to taxation, explaining that the payments were accessions to wealth over which petitioners had complete dominion and control and therefore fell within the well-recognized definition of income (*id.* at 33-38).

Petitioners' appeals were consolidated in the court of appeals, which affirmed the judgments below (Pet. App. 1-12). The court agreed that the district court had acted correctly in resolving the case at the summary judgment stage, because discerning the State's motivation for making the dividend payments was a matter of interpretation of the statute and its legislative history (*id.* at 5-6). The court rejected the claim that the dividend payments were not "income" and hence could not constitutionally be subject to taxation. The court stated that, even if petitioner Greisen were correct in arguing that mineral deposits belonged to the individual residents of Alaska rather than to the State, that would still not advance his argument because the dividends represented interest from the Permanent Fund, which would be income regardless of the ownership of the principal. *Id.* at 7-8. The court held that the payments were not excludable as "gifts" because the State did not make the payments with donative intent. The court explained that, as the district court had found, the preamble to the statement of purposes in the Act indicated that the dividends were given out of a sense of moral or legal duty. The court also pointed out that the statement of purposes in the Act showed that the legislature acted with the intent of benefitting the State. *Id.* at 8-12.

ARGUMENT

The decision below is correct and does not conflict with any decision of this Court or of any other court of ap-

peals. Moreover, the questions presented concern the treatment of payments received under a program that is unique to the State of Alaska, and their resolution depends in large part upon the particular circumstances surrounding the enactment of that program. They are therefore not of broad significance outside the particular context involved here. Accordingly, there is no reason for review by this Court.

1. Petitioner Greisen contends (87-1244 Pet. 6-11) that the taxation of the dividend payments violates the Constitution because those payments are not "income" within the meaning of the Sixteenth Amendment. This contention is without merit for two fundamental reasons.

a. First, petitioner misapprehends the constitutional basis for the tax on the dividend payments. Article I, Section 8, Clause 1 of the Constitution provides: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises * * *." This Court has long recognized that this provision confers upon Congress a comprehensive power to tax. See, *e.g.*, *Steward Machine Co.* v. *Davis*, 301 U.S. 548, 581 (1937); *Brushaber* v. *Union Pac. R.R.*, 240 U.S. 1, 12 (1916); *License Tax Cases*, 72 U.S. (5 Wall.) 462, 471 (1867). This power is not completely unfettered; it was made subject to certain specific constitutional limitations, including the requirement that "direct [t]axes" must be apportioned according to population. Art. I, § 2, Cl. 3; see also Art. I, § 9, Cl. 4.

It was always apparent that this limitation on direct taxation applied to taxes on real estate. See, *e.g.*, *Springer* v. *United States*, 102 U.S. 586, 600-601 (1881); *Hylton* v. *United States*, 3 U.S. (3 Dall.) 171 (1796). In *Pollock* v. *Farmers' Loan & Trust Co.*, 157 U.S. 429, on reh'g, 158 U.S. 601 (1895), this Court held that, like a tax on real property, taxes on personal property and taxes on income derived from property were also direct taxes. Accordingly,

the Court held that an income tax on rent, interest, and corporate dividends was a direct tax requiring apportionment under the Constitution. The Court was explicit in stating that it was considering taxes only on those forms of income. See 158 U.S. at 635.

The passage of the Sixteenth Amendment, which granted Congress the power to tax "incomes, from whatever source derived, without apportionment among the several States," removed the constitutional impediment to unapportioned taxation of the forms of income involved in *Pollock*. But the Sixteenth Amendment imposed no limitations on the comprehensive taxing power granted to Congress by Article I, Section 8, Clause 1, which remains the source of Congress's power to impose any form of taxation, including income taxes. The purpose and effect of the Sixteenth Amendment was to *expand* Congress's power to tax income. As this Court recognized in the seminal cases decided soon after the adoption of the Sixteenth Amendment and the enactment of the Income Tax Act of 1913, ch. 16, § 2, 38 Stat. 166, the Amendment was needed to permit the imposition of "direct" income taxes without apportionment, but it was not necessary for taxation of other forms of income not at issue in the *Pollock* case. See *Brushaber* v. *Union Pac. R.R.*, 240 U.S. at 17-18; *Stanton* v. *Baltic Mining Co.*, 240 U.S. 103, 112-113 (1916); see also 1 B. Bittker, *Federal Taxation of Income, Estates, and Gifts* ¶¶ 1.2.2, 1.2.3 (1981). Thus, regardless of the definition of the term "income" in the Sixteenth Amendment, Congress has the power under Article I, Section 8, Clause 1, to impose an income tax that would not have been regarded as a direct tax before that Amendment was passed. Accordingly, it

has the power to tax income such as that received by petitioners from the State of Alaska.[4]

b. Even accepting for purposes of argument petitioner's premise that the Sixteenth Amendment is the sole source of congressional power to tax income, there is no merit to petitioner's contention that taxing the dividend payments is unconstitutional. It is well recognized that Congress, in the enactment of income tax statutes, has intended to reach all "income" within its constitutional power, except that specifically excluded by statute. See, *e.g.*, *Commissioner* v. *Kowalski*, 434 U.S. 77, 82-83 (1977); *Helvering* v. *Clifford*, 309 U.S. 331, 334 (1940). Indeed, this intent was explicitly stated in the legislative history when Congress enacted the Internal Revenue Code of 1954. See H.R. Rep. 1337, 83d Cong., 2d Sess. A18 (1954); S. Rep. 1622, 83d Cong., 2d Sess. 168 (1954) ("the word 'income' [in Section 61(a)] is used in its constitutional sense").

The commonly accepted definition of "income" was enunciated by this Court in *Commissioner* v. *Glenshaw Glass Co.*, 348 U.S. 426 (1955), where the Court concluded that punitive damages could be taxed. Petitioner admits (87-1244 Pet. 6) that that definition—"undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion" (348 U.S. at 431)—

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[4] Though he does not explicitly make the contention in this Court, petitioner Greisen argued in the courts below that the citizens of Alaska owned the State's mineral resources and hence the tax on the dividend payments was not on income, but rather was a direct tax on property. As the district court demonstrated (Pet. App. 36-38), the premise of this contention is erroneous; the Alaska Constitution itself makes clear that the mineral resouces belong to the State. In any event, even if petitioner's premise were correct, *Stanton* v. *Baltic Mining Co.*, *supra*, is direct authority for the proposition that income derived from such mineral resources is subject to federal taxation.

covers the payments at issue here. Petitioner's contention appears to be that the *Glenshaw Glass* definition is a definition of "income" only within the meaning of Section 61(a) of the Code, but that the constitutional definition of "income" is narrower. But there is simply no basis for concluding that this Court in *Glenshaw Glass* applied a statutory definition of "income" that exceeded the constitutional power of Congress, thereby unconstitutionally subjecting the taxpayer in that case to taxation. Indeed, the Court specifically recognized that Congress intended "to exert in this field 'the full measure of its taxing power' " (348 U.S. at 429 (quoting *Helvering* v. *Clifford*, 309 U.S. at 334)), thereby recognizing that the statutory and constitutional definitions are identical. Thus, petitioner's contention that the payments here are not "income" that can constitutionally be taxed must fail.[5]

2. Petitioners contend (87-1130 Pet. 8-16; 87-1244 Pet. 11-12) that the Alaska dividends are excludable as "gift[s]"

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[5] Petitioner erroneously contends (87-1244 Pet. 8) that *Simmons* v. *United States*, 308 F.2d 160, 167-168 (4th Cir. 1962), conflicts with the decision below because it recognizes the *Glenshaw Glass* definition as an interpretation of the Sixteenth Amendment. Clearly, *Simmons* creates no conflict with the decision below. By petitioner's own admission (87-1244 Pet. 6), the payments involved here would be income if the *Simmons* definition were applied. And the court below found that the payments were income. The fact that the court below did not find it necessary to invoke *Glenshaw Glass* to reach the same result that the Fourth Circuit concededly would have reached on these facts does not create a conflict in the circuits. Nor do the commentators cited by petitioner (87-1244 Pet. 6-7) support his position in any way. They merely express the view that the *Glenshaw Glass* opinion did not clearly indicate which of the two theories set forth above provided the basis for the Court's conclusion that the punitive damages there could constitutionally be taxed as income. Either of these rationales would similarly require rejection of petitioner's contention that the Constitution does not permit taxation of the type of income involved here.

under Section 102 of the Code. The criteria for determining whether a specific transfer of property is a "gift" or instead results in income to the recipient were delineated in *Commissioner* v. *Duberstein*, 363 U.S. 278 (1960), where the Court explained that the "critical consideration" in this inquiry is the transferor's " 'intention with which payment, however voluntary, has been made' " (*id.* at 285-286 (citation and footnote omitted)). The Court framed the inquiry into the transferor's intention as follows (*id.* at 285 (citations and footnote omitted)): "[I]f the payment proceeds primarily from 'the constraining force of any moral or legal duty,' or from 'the incentive of anticipated benefit' of an economic nature, * * * it is not a gift. * * * A gift in the statutory sense * * * proceeds from a 'detached and disinterested generosity,' * * * 'out of affection, respect, admiration, charity or like impulses.' " Both courts below correctly concluded that the payments involved here clearly were not gifts under the analysis set forth in *Duberstein*.

As the courts below found (Pet. App. 9-10, 30-31), the preamble to the Alaska statute demonstrates that the Alaska legislature considered it to be its "duty" (Pet. App. 40) to remit dividends to Alaska residents from the income derived from the State's mineral resources. Since the motivation for the payments proceeded from a perceived " 'moral or legal duty,' * * * it is not a gift" (*Duberstein*, 363 U.S. at 285 (citation omitted)). In addition, the Alaska legislature clearly contemplated that the State would derive benefits from the dividend program when it was enacted. Among the purposes stated in the Act were "to encourage persons to maintain their residence in Alaska and to reduce population turnover" and "to encourage increased awareness and involvement by the residents of the state in the management" of the Permanent Fund (Pet. App. 41). Indeed, it was these elements of the program that impelled the Supreme Court of Alaska to uphold the

program as consistent with the Alaska Constitution's requirement that any appropriation of public money be made for a "public purpose." See *Williams* v. *Zobel*, 619 P.2d 448, 460-464 (1980). These perceived and anticipated benefits to the State also negate treatment of the dividend payments as gifts.[6]

Petitioners argue (87-1130 Pet. 7, 10-13) that the *Duberstein* test should not have been applied, and the court of appeals instead should have inquired whether the payment could appropriately be characterized as part of a "quid pro quo" arrangement. Petitioners further maintain that the benefits to the State listed in the statute's statement of purposes are not sufficiently "substantial" to make the dividend payment part of a quid pro quo arrangement. This argument is flawed. Even if a "quid pro quo" analysis were substituted for the well-recognized *Duberstein* analysis, that would not assist petitioners. Their opinion of the substantiality of the benefits identified by the State is irrelevant. The Alaska legislature concluded when it enacted the dividend program that the State would receive benefits in return for making the payments, and its expectation of those benefits is a sufficient "quid pro quo" to preclude the tax treatment of the dividend payments as "gifts" under either analysis.[7]

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[6] Petitioners assert (87-1130 Pet. 9) that these stated purposes are outweighed by the other purpose listed in the statute—the intent to "provide a mechanism for equitable distribution to the people of Alaska of at least a portion of the state's energy wealth" (Pet. App. 40-41). But there is no basis for concluding that this was the "dominant reason" (87-1130 Pet. 9) and therefore no basis for ignoring the other stated purposes, which manifestly preclude gift treatment.

[7] Moreover, Section 542 of the Highway Revenue Act of 1982, Pub. L. No. 97-424, Tit. V, 96 Stat. 2195, reflects the apparent understanding of Congress that these dividend payments are taxable. That statute, which was proposed by Senator Murkowski of Alaska, was

3. Petitioners contend (87-1130 Pet. 16-17; 87-1244 Pet. 11-12) that the district court should not have decided this case at the summary judgment stage because the question of "donative intent" under *Duberstein* is a factual one that should have been submitted to a factfinder. As both courts below correctly concluded (Pet. App. 5-6, 25-28), however, the question of the intent of the legislature in enacting a statute is a legal one, to be resolved, as in any case involving statutory interpretation, by reference to the text of the statute and its legislative history. See *Heard* v. *Commissioner*, 326 F.2d 962, 965-966 (8th Cir.), cert. denied, 377 U.S. 978 (1964). Accordingly, as petitioners' own motions for summary judgment necessarily recognized, there were no factual issues in this case requiring a trial, and the district court therefore properly decided the case at the summary judgment stage.

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designed to relieve some recipients of the Alaska dividend from the necessity of filing an income tax return when they owed no tax because of the $1,000 personal exemption provided by Section 151 of the Code. It excuses from filing "an individual whose only gross income for the taxable year is a grant of $1,000 received from a State which made such grants generally to residents of such State." The text of the statute itself characterizes such payments as "gross income" and therefore belies the contention that they are excludable from gross income under Section 102 of the Code.

CONCLUSION

The petitions for a writ of certiorari should be denied.
Respectfully submitted.

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